

OFFICE OF THE MAYOR

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MAYOR



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September 24, 2012

Members of the House Oversight, Reform and Ethics Committee:

I offer the following comments as the House Oversight, Reform and Ethics Committee is considering HB 5879, which would revise the Freedom of Information Act (FOIA) in a number of ways. Some of these revisions appear neutral – or perhaps even beneficial – and FOIA could certainly use revising. But many of the proposed changes are troubling in light of the predicament facing local government in this state.

As you know, sharply declining revenues have forced tight budgets and workforce reductions on communities across Michigan. As a result, this is not a good time to impose new or enlarged unfunded mandates, which is what FOIA is – or will be if these changes are approved – on the cities, villages, townships, counties and school districts of this state.

The bill, for example, reduces the community's cost recovery rights by 20% for each day a response is late under the artificial deadlines imposed by FOIA. (See subsection 5(8).) But some FOIA requests involve large amounts of material, requiring heroic efforts to gather, and this rendered the deadlines unrealistic even in the days before layoffs and attrition became the new normal.

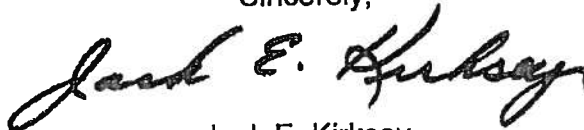
Along these same lines, subsections 10(6) and 10(7) also appear needlessly punitive. Why should a community pay the legal fee of a FOIA plaintiff who "prevails in part" even if that part is trivial? And why should the punitive damages limit be increased to \$5,000 when communities are already pinching pennies? Wouldn't it be wiser to try to head off FOIA litigation in the first place?

This could be accomplished by requiring FOIA requesters to appeal internally, using the procedure set forth in subsection 10(1)(a), before filing suit. Because this process has its own "shot clock," FOIA requests would not be delayed for long, and such appeals often resolve the matter because they give municipal attorneys a chance to review the FOIA decision before it goes to court.

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Municipal officials stand ready to suggest other useful reforms of FOIA which would restore the original intent of the law, while making it more up-to-date and easier and less costly to administer. Unfortunately, in its current form, HB 5879 hurts the cause more than it helps.

Sincerely,

A handwritten signature in cursive script, reading "Jack E. Kirksey". The signature is written in dark ink and is positioned above the printed name and title.

Jack E. Kirksey
Mayor